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2 BILL NO. Z-95-07-02.

3 ZONING MAP ORDINANCE NO. Z-05-95

4 AN ORDINANCE amending the City of
5 Fort Wayne Zoning Map No. M-19.

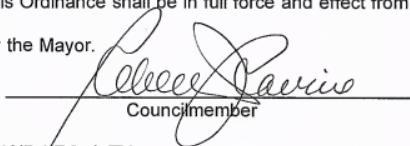
6 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT
7 WAYNE, INDIANA:

8 SECTION 1. That the area described as follows is hereby designated a B-3-B
9 (General Business) District under the terms of Chapter 157 Title XV of the Code of the
10 City of Fort Wayne, Indiana of 1974:

11 Lots 566, 567, 568 and 569 in Belmont Addition to the City of Fort Wayne,
12 Indiana,

13 and the symbols of the City of Fort Wayne Zoning Map No. M-19, as established by
14 Section 157.016 of Title XV of the Code of the City of Fort Wayne, Indiana are hereby
15 changed accordingly.

16 SECTION 2. That this Ordinance shall be in full force and effect from and after
17 its passage and approval by the Mayor.



Councilmember

20 APPROVED AS TO FORM AND LEGALITY:

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22 J. TIMOTHY McCAULAY, CITY ATTORNEY

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Read the first time in full and on motion by Parmer,
and duly adopted, read the second time by title and referred to the
Committee on Regulations (and the City Plan Commission
for recommendation) and Public Hearing to be held after due legal notice, at
the Common Council Conference Room 128, City County Building, Fort
Wayne, Indiana, on , 19 , the day of
M., E.S.T.

DATED: 7-11-95

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Parmer,
and duly adopted, placed on its passage. PASSED LOST
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>7</u>			<u>2</u>
BRADBURY	<u>✓</u>			
EDMONDS				<u>✓</u>
GIAQUINTA				<u>✓</u>
HENRY	<u>✓</u>			
LONG	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO				

DATED: 8-22-95

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as ANNEXATION (APPROPRIATION) (GENERAL)

(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. 2-05-95
on the 22nd day of August, 1995

ATTEST:

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

(SEAL)

Don J. Schmidt
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 23rd day of August, 1995,
at the hour of 11:00 o'clock P.M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 24th day of August,
1995, at the hour of 8:15 o'clock A.M., E.S.T.

Paul Helmke
PAUL HELMKE, MAYOR

COMMUNITY & ECONOMIC DEVELOPMENT

FT. WAYNE, IN., 6-7

RECEIVED FROM Kelley

THE SUM OF Three

ON ACCOUNT OF -

7139

B1B to

B3B

PAID BY: CASH CHECK M.O.

REZONING PETITION

AREA MAP

CASE NO. #590



COUNCILMANIC DISTRICT NO. 5

Map No. M - 19
LW 6-22-95

R1	One-Family	B1	Limited Business	M1	Light Industrial
R2	Two-Family	B2	Planned Shopping Center	M2	General Industrial
R3	Multi-Family	B3	General Business	M3	Heavy Industrial
RA/RB	Residential	B4	Roadside Business	MHP	Mobile Home Park
PUD	Planned Unit Dev.	POD	Professional Office District		



Petition for a Zoning Map Amendment

Community & Economic Development / 1 Main Street Rm 830 / Fort Wayne, IN 46802 / (219) 427-1140

I/We Allen C. Dornte do hereby petition to amend the Zoning Map of the City of Fort Wayne Indiana, by reclassifying from a/an B 1 B designation to a/an B 3 B designation, the property located at the common street address of: 5002 S. Calhoun St., Fort Wayne, Indiana and further described as follows:

Lots 566, 567, 568 and 569 in Belmont Addition to the City

of Fort Wayne

(Please attach a legal description if more space is needed.)

The purpose of this proposed rezoning is to permit the use of the property for the following:

To permit applicant to conduct a Rent To Own rental business and a Buy Here - Pay Here used car lot.

Property owners Name(s): Allen C. Dornte

Street Address: 495 Lane 150, Lake James

City: Angola State: IN Zip: 46703 Phone: (219)

Applicants Name (if different from above): Billy Mullins

Street Address: 1536 St. Marys Ave.

City: Fort Wayne State: IN Zip: 46808 Phone: (219) 426-0637

I/We the undersigned, do hereby certify that I am/We are the owner(s) of more than fifty percent (50%) of the property described in this petition; that I/we agree to abide by all provisions of the Fort Wayne Zoning Ordinance as well as all procedures and policies of the Fort Wayne City Plan Commission as relating to the handling and disposition of this petition; and that the above information is true and accurate to the best of my/our knowledge.

Allen C. Dornte

Signature

Allen C. Dornte

5/30/95

Date

Printed Name

Rarick's Rent To Own - Applicant

06/15/95

By Billy G. Mullins

Signature

Printed Name

Date

Signature

Printed Name

Date

Notes to the Applicant:

- If additional space is needed for either a legal description, or property owners names addresses and signatures, please attach same to this form.
- All requests for deferrals, continuances, withdrawals, or request that the ordinance be taken under advisement shall be filed in writing and be submitted to the City Plan Commission prior to the legal notice being submitted to the newspaper for publication.
- Filing of this petition grants the City of Fort Wayne permission to post "Official Notice" on the petitioned property. Failure to post, or to maintain posting may prevent the public hearing from being held.
- All checks should be made payable to: City of Fort Wayne.

Name and address of preparer, attorney or agent.

A. Dale Bloom
BLOOM, BLOOM, MORE and MILLER (219) 424-5930

Telephone Number

203 E. Berry St., Suite 1500

Fort Wayne, Indiana 46802-2786

Form Rez494

Receipt #:

Date Filed:

Map #:

Reference #:

RESOLUTION OF ZONING ORDINANCE AMENDMENT RECOMMENDATION

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, on July 11, 1995 referred a proposed zoning map amendment to the City Plan Commission which proposed ordinance was designated Bill No. Z-95-07-02; and,

WHEREAS, the required notice of public hearing on such proposed ordinance has been published as required by law; and,

WHEREAS, the City Plan Commission conducted a public hearing on such proposed ordinance on July 17, 1995.

NOW THEREFORE, BE IT RESOLVED that the City Plan Commission does hereby recommend that this ordinance be returned to the Common Council with a DO PASS recommendation based on the Commission's following "Findings of Fact".

- (1) the grant will not be injurious to the public health, safety, morals, and general welfare of the community;
- (2) the use or value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner;
- (3) the need for the rezoning arises from some condition peculiar to the property involved and the condition is not due to the general conditions of the neighborhood;
- (4) the strict application of the terms of the zoning ordinance will constitute an unusual and unnecessary hardship if applied to the property for which the rezoning is sought; and,
- (5) the grant does not interfere substantially with the comprehensive plan adopted under the 500 series of the metropolitan development law.

BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resolution adopted at the meeting of the Fort Wayne City Plan Commission held July 24, 1995.

Certified and signed this
3rd day of August 1995.



Carol Kettler Sharp
Secretary

- b. Bill No. Z-95-07-02 - Change of Zone #590
From B1B to B3B
5002 So Calhoun Street

Dale Bloom, attorney for the petitioners, Allen C Dornte. Mr. Bloom stated that they want to rezone the property for the purpose of selling cars as well as a rental business. He stated that the used car business is not permitted in the current zoning (B1B). A number of issues have been raised by the staff comments. He stated that across the street from this property is Southgate Plaza, which is zoned B-3-B, and according to the Comprehensive Plan, it indicates that Calhoun Street has been designed to be a buffer area between the B3B and B1B. He stated that the lots they are seeking to rezone are currently B1B, along with a number of other lots any number of other lots that adjoin it. He stated that in back of the B1B is residential classification. He stated that Calhoun Street has been portrayed as a natural buffer. He stated that their petition does not seek to cause deterioration, or to inhibit investments. He stated that on contrary what they want to do is maintain this property as a viable business. He stated that it is currently operated by Mr. Dornte as a service station, and has been used as such for many years. He stated that they intend to use this location, if rezoned, for a "Buy Here, Pay Here Used Car Lot" rent to own combination. He stated that they would have various items of merchandise that they would rent, such as VCR's, video cameras, washer/dryer etc. He stated that they feel what they propose to do, they maintain, will increase, rather than cause a deteriorating effect in the neighborhood. He stated that with the putting in of sidewalks, curbs, landscaping that this new business would be a benefit to the neighborhood. One of the concerns that was expressed by staff is that, when they request the B3B, they will be adding another 40 to 50 uses for this property. He stated that there are already uses in the B1B that would not be desirable at this location. He stated that a liquor store, a masseur salon, would not be something that would be desirable. He stated that with all of the uses allowed in the B1B, he does not feel that too many of the uses allowed are practical for this location. He stated that if they obtained the zoning for the use they have requested, they would agree to enter into a restrictive covenant that would limit the use of the real estate. It would limit the use of the property under the B3B zoning to only the used car lot facility. He stated that it would be a covenant that would run with the land. He felt that a covenant would alleviate some of the concerns that they are spot zoning, or that the zoning would deteriorate the neighborhood, or that they would allow all the other uses, which are listed, under the B3B zoning classification.

Ken Nord, President of CE&M Architects & Engineers, appeared before the Commission. Mr. Nord stated that he met several months ago with the staff of Traffic Engineering to review the access to the site. He stated that presently there are three drives into the property, two on Calhoun Street, and one on Lenox Avenue. He stated that their proposal is to close the northern most approach on Calhoun Street and to specifically narrow down the entrance from Lenox Avenue. He stated that they will have only one entrance at the south end of the property on Calhoun Street and one somewhat near the Calhoun and Lenox intersection on Lenox. He stated that Traffic Engineering staff does not find these two accesses to be a problem. As far as the building is concerned they are looking at a 4800 square foot structure. It will be a one story structure. He stated that they have not determined the final exterior appearance, however get a retail look. It will have fairly large windows on at least two sides of the building and the building will be of a wood frame type construction. He stated that there will be a masonry or stucco type exterior finish on the two major sides, which would be the north and the side on Calhoun Street. He stated that the rear will probably be done in a metal siding. He stated that the overall height will be approximately 20 to 23 feet at the highest point. He stated that they will have to provide landscaping. He stated that they propose to provide improvements along Lenox Avenue.

He stated that they have met with the Street Engineering staff and they felt that their plans were consistent and compatible with their plans for the area along Calhoun Street.

Mel Smith questioned if they would be removing the tanks from the station.

Mr. Nord stated that they would be required to be removed.

Jim Hoch questioned how many cars would be located on the lot at one time.

Mr. Bloom stated that Mr. Dougherty would address that issue.

Terry Mullins, president of operations for Raricks appeared before the Commission. Mr. Mullins stated that they currently have 15 rental/purchase stores that they operate in three different states. He stated that they also have one auto lot, that they operate on Spring and St. Marys. He stated that they intended use for this property is similar to what they have at the Spring/St. Marys location. He stated that the only difference being is that the car lot would be adjacent to the building, rather than across the street. He stated that the number of cars they intend to have on the lot would be from 15 to 20 cars, depending on the final layout of the property. He stated that they would need enough space on the lot for customer parking.

Mel Smith questioned if they already had a business in Southgate Plaza.

Mr. Mullins stated that they have a rental/purchase store in Southgate Plaza.

Mel Smith questioned if it could accommodate everything except the used car sales.

Mr. Mullins stated that can accommodate everything but the used car dealership.

Mel Smith questioned why this could not go through the Board of Zoning Appeals as a Use Variance.

Dale Bloom stated that originally they talked about it being a Use Variance in a B1B. He stated that the petition was filed as a rezoning, because of the discussions that he had with Pat Fahey, Senior Planner, with C&ED.

Pat Fahey stated that it is staff's opinion, that with a commercial zoning, it is very difficult for to really meet the legal requirements for a use variance. He stated that for a use variance there must be some hardship associated with the property, that makes it difficult to use as it is currently zoned. He stated that in this instance with a B1B commercial classification, it permits a large array of commercial uses. He stated that it is opinion, and has been, whenever someone proposes a use variance in a commercial district, that it would be difficult to meet the legal test to show what the hardship is on the property to support the use variance.

Don Schmidt stated that he felt that this was one of the most hardship type of land in the entire community, a gas station. He stated that all over town there are vacant stations. He stated that currently at the corner of Sherman and Spring there is a super location that is going unused because of the zoning.

Doug Bowman, 5225 Buell Drive, president of the Neighborhood Association appeared before the Commission. He stated that Mr. Mullins gave a very informative presentation at the general

association meeting in April. He stated that he presented plans to the association, showing the building and the landscaping. He stated that the members that were present at that meeting in April did not feel that this would be an eyesore. He stated that all the members that were at the April meeting were in favor of this use and no opposition was voiced at that time. He stated that he personally did not feel that this use would be a detriment to the neighborhood. He stated that the people at the meeting felt that this was a much better option than just having the property set vacant.

Karen Spake, real estate broker, with Goldstein-Knapke Company, appeared before the Commission. Ms. Spake stated that this property has been on the market for approximately 4 years. She stated that she has only represented the property since January of 1995. She stated that it is very hard to sell a small station to another intended station owner. She stated that to see a new building their, as is proposed, a viable business, on the property will be an asset to the area.

Don Schmidt asked if the who would be required to remove the tanks.

Ms. Spake stated that the current property owner would be liable for removing the tanks.

Don Schmidt asked if Mr. Dornte is going out of business.

Ms. Spake stated that he was.

Mr. Schmidt questioned if Rarick's does not purchase the property is will become vacant property.

Allen Dornte, the applicant and current property owner, appeared before the Commission. Mr. Dornte stated that he has operated the filling station on this property since 1964. He stated that he occasionally has sold used cars from the property for friends, customers and employees. He stated that he has never had any objection to that activity from anyone in the area. He stated that the property has been for sale for 4 years. He stated that he has been through various brokers and he has not had one down payment or any interest that has been substantiated with any type of purchase offer. He stated that he has the opportunity to sell it to Mr. Mullins, pending zoning approval, if he takes the tanks out, which he plans to do. He stated that he had arranged for the tank removal for the end of June. He stated that because of the delays in zoning, he has postponed it, and they are now scheduled to come out on July 31st. The state requires that you submit a plan to remove the tanks. He stated that you have a 90 day window to do the submittal once the application has been received. He stated that he has approximately 45 days left to remove the tanks.

Mr. Schmidt questioned what would happen if he does not have the tanks out in the prescribed time.

Mr. Dornte stated that he would have to reapply. He stated that because he missed the July 1st deadline fee has passed, he was required to pay an additional \$1,160 tank fees for the year. Mr. Dornte stated that when the tanks are removed and the loan has been approved Mr. Mullins can have immediate possession. He stated that this proposed use would probably generate less traffic. He stated that he probably takes care of 100 cars a day. He didn't think he (Mr. Mullins) would have that type of traffic.

Ms. Buskirk questioned if they would stay in Southgate Plaza if they do not receive this rezoning.

Mr. Mullins stated that in the short run, but the sale of cars is something that they want to do. He stated that it would be their intent to stay in Southgate, if the zoning is not approved, until they find another suitable site for their proposed use.

There was no one else present who spoke in favor of or in opposition to the proposed rezoning.

FACT SHEET

Z-95-07-02

BILL NUMBER

Division of Community
Development & Planning

BRIEF TITLE	APPROVAL DEADLINE	REASON
Zoning Map Amendment		
From B1B to B3B		

DETAILS

Specific Location and/or Address 5002 S Calhoun St	POSITIONS	RECOMMENDATIONS
Reason for Project To conduct a "rent-to-own" rental business and a "Buy Here - Pay Here" used car lot.	Sponsor	City Plan Commission
Discussion (Including relationship to other Council actions) <u>17 July 1995 - Public Hearing</u> See Attached Minutes of Meeting <u>24 July 1995 - Business Meeting</u> Motion was made and seconded to return the ordinance to the Common Council with a DO PASS recommendation. Of the eight (8) members present, six (6) voted in favor of the motion, one (1) voted against the motion, the Chair did not vote. Motion Carried Members Present: Linda Buskirk, Ernest Evans, James Hoch, Thomas Quirk, Dave Ross, Carol Kettler Sharp, Mel Smith, Vicky VerPlanck Member Absent: Donald Schmidt	Area Affected	City Wide Other Areas
	Applicants/ Proponents	Applicant(s) Allen C Dornte / Billy G Mullins City Department Other
	Opponents	Groups or Individuals Basis of Opposition
	Staff Recommendation	<input type="checkbox"/> For <input checked="" type="checkbox"/> Against Reason Against -approval is not consistent with the character and condition of development in area
	Board or Commission Recommendation	By <input checked="" type="checkbox"/> For <input type="checkbox"/> Against <input type="checkbox"/> No Action Taken <input type="checkbox"/> For with revisions to conditions (See Details column for conditions)
	CITY COUNCIL ACTIONS (For Council use only)	<input type="checkbox"/> Pass <input type="checkbox"/> Other <input type="checkbox"/> Pass (as amended) <input type="checkbox"/> Hold <input type="checkbox"/> Council Sub. <input type="checkbox"/> Do not pass

POSITIONS	RECOMMENDATIONS
Sponsor	City Plan Commission
Area Affected	City Wide Other Areas
Applicants/ Proponents	Applicant(s) Allen C Dornte / Billy G Mullins City Department Other
Opponents	Groups or Individuals Basis of Opposition
Staff Recommendation	<input type="checkbox"/> For <input checked="" type="checkbox"/> Against Reason Against -approval is not consistent with the character and condition of development in area
Board or Commission Recommendation	By <input checked="" type="checkbox"/> For <input type="checkbox"/> Against <input type="checkbox"/> No Action Taken <input type="checkbox"/> For with revisions to conditions (See Details column for conditions)
CITY COUNCIL ACTIONS (For Council use only)	<input type="checkbox"/> Pass <input type="checkbox"/> Other <input type="checkbox"/> Pass (as amended) <input type="checkbox"/> Hold <input type="checkbox"/> Council Sub. <input type="checkbox"/> Do not pass

DETAILS

POLICY/ PROGRAM IMPACT

Policy or Program Change	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Operational Impact Assessment		

(This space for further discussion)

Project Start Date 7 June 1995

Projected Completion or Occupancy Date 3 August 1995

Fact Sheet Prepared by Date 3 August 1995

Reviewed by Patricia Biancaniello

Reference or Case Number

B August 1995

ORIGINAL

#590

ORIGINAL

DIGEST SHEET

TITLE OF ORDINANCE Zoning Map Amendment

DEPARTMENT REQUESTING ORDINANCE Land Use Management - C&ED

SYNOPSIS OF ORDINANCE 5002 S Calhoun Street

Z - 95-07-02

EFFECT OF PASSAGE Property is currently zoned B-1-B - Limited Business. Property will be zoned B-3-B - General Business.

EFFECT OF NON-PASSAGE Property will remain zoned B-1-B - Limited Business.

MONEY INVOLVED (Direct Costs, Expenditures, Savings) _____

(ASSIGN TO COMMITTEE) _____
